Senate Reform:

EXPANDING THE BLUEPRINT

BEYOND REGIONALISM: THE REST OF THE SENATE REFORM STORY...

INTRODUCTION

Traditionally, the rationale for a reformed Senate has revolved around the larger issue of regional representation – how smaller and less populated regions in a federal country can be effectively represented within the institutions of national decision-making. In Canada, the standard opening gambit in the debate over Senate reform is the observation that federal countries usually over-represent smaller provinces or states within a separate chamber of the national legislature to provide for effective representation of those regions within the national parliament. The typical rejoinder is to invoke the doctrine of "democracy" or, more specifically, representation by population to repudiate the very idea of giving PEI the same Senate representation as Ontario.

Admittedly, the issue of regional representation is more of a concern for smaller provinces, and it has always resonated the loudest in Western Canada. This is no accident. Afterall, the West has often seen the great majority of its MPs sitting as the Loyal Opposition. By extension, the West is the one region which has traditionally lacked a strong voice within the primary institutions of national decision-making – the cabinet and the governing party.[1] But if the need for more effective regional representation lacks currency outside of Western Canada, where does this leave Senate reform?

Suppose we were to leave aside for the moment any consideration of regional representation. Does Senate reform still make sense? At first glance, explaining the need for upper house reform without pointing toward regional representation seems to be nothing more than an exercise in futility. In Canada, the regional "percussion" section of the Senate reform orchestra has always been so strong it seems they are the only instruments being played and the music has no "melody" at all. But there is a melody in the Senate reform debate, and it consists of several variations on a basic theme: *Senate reform is the key to repairing what many see as an increasingly dysfunctional democratic ethos in Canada.*[2] As such, regional representation is only part of the larger rationale for Senate reform. As this research report demonstrates, Senate reform is a necessary step for Canada to achieve its democratic potential and to increase our collective recognition of Canada's wide diversity. This goal should interest all Canadians regardless of their regional or provincial identity.

Canada West Foundation is a non-profit and non-partisan research institute located in Calgary, Alberta. This research report is the final study in a series released by the Foundation exploring Alberta's 1998 Senate election. The purpose of this series is to inform Canadians about the Senate, its need for renewal, and how electing Senators at the provincial level can advance Senate reform. This research report was authored by Canada West Foundation Research Associate Dr. Peter McCormick and CWF Senior Policy Analyst Casey Vander Ploeg. Because of the independence given the authors in writing this report, the opinions and recommendations expressed within are those of the authors only, and do not necessarily reflect the opinions of the Canada West Foundation Council, its members, or donors. Permission is hereby given by the copyright owners for any and all reproduction of this report in its entirety for non-profit and educational purposes.

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EXECUTIVE SUMMARY

The debate over Senate reform has traditionally revolved around the larger issue of regional representation – how smaller and less populated regions can be effectively represented within the institutions of national decision-making. As such, Senate reform is typically viewed as speaking only to the smaller provinces in Canada. But regional representation is only one item in a much larger catalogue of reasons for Senate reform. Indeed, a renewed Senate is essential if Canada is to achieve its democratic potential and if our country's great diversity is to be represented in national decision-making.

At the heart of any democratic system is the balance between making public decisions through majority rule while providing essential inputs and safeguards for self-defining minority interests. In other words, majority rule defines democracy as an outcome, but minority right defines democracy as a process. Each democratic country has its own set of unique devices and traditions to accomplish this delicate balance, but all of them share one universal objective – the deliberate diffusion or decentralization of political power as opposed to the centralization of power. A brief survey of Canada's public decision-making institutions reveals a highly centralized process largely immune from effective checks and controls that is very disturbing. In fact, to describe Canada's national institutions and conventions is to almost define the word centralization. What comes through again and again is the centrality of the prime minister. A renewed Senate is Canada's best means to diffuse power and create a parliament that will better reflect the full range of Canada's diversity. Senate reform will shore up democratic deficiencies in Canada's most important democratic institutions:

- **Elections:** In theory, governments always live under the shadow of the next vote, and this prevents the arbitrary exercise of political power. But the effectiveness of elections as a practical check on government is limited. Elections are infrequent, and in Canada, many elements of the process are centralized in the hands of prime ministers who reserve the right to call elections and who also have veto power over who can contest the election for the party. In any electoral contest, it is the party leader and not the local candidate or even the issues that are important. *An elected Senate would extend elections to include all parliamentarians. But more important, elections to the Senate would take place at fixed times separate from elections to the Commons, and under new rules and procedures outside the control of prime ministers.*

- **Electoral System:** A key tenet of any democratic order is a representative government based upon the choices made by voters. The mechanism which accomplishes representative government is the electoral system, which translates voters' choices into legislative seats. Canada's plurality vote system tends to promote a homogeneous and centralized type of representation that is at odds with the diverse nature of Canadian society. Plurality vote rewards large parties, traditional candidates and often hands the prime minister a parliamentary majority when no majority exists in the electorate. All this is accomplished by amplifying regional differences in terms of support for various political parties. This creates misperceptions about the country and even strains national unity. *Senate reform offers a clear way out by providing our best opportunity for electoral reform – a new electoral system to balance plurality vote. If the Senate were elected under proportional representation, it would yield a parliament that more accurately reflects the choices of voters and the diversity of opinions and preferences that exist within the electorate.*

- **Parliament:** In a parliamentary system, the most important check on government is parliament itself. Through the notion of responsible government, the political executive is answerable to the Commons and the Senate, and must maintain "confidence" to continue governing. But in Canada, the government is usually the majority party in the Commons, which effectively neutralizes any chance of a vote of non-confidence from opposition members. The notion of party discipline means the majority party also controls the government MPs and helps ensure that they vote with the prime minister and the cabinet. The Senate is unelected and lacks any legitimacy to act. *Senate reform is essential if Canada is to have a truly bi-cameral parliament. With Senate reform, the government can continue to exercise leadership by playing a large role in the Commons, but it will have to draft legislation with the Senate in mind. Senate reform will not replace representative or responsible government, but it will enhance it by balancing government dominance in the Commons.*

- **Federalism:** Federalism balances majority rule and minority right by diffusing power to the provinces and representing regional minorities in the national government. But in Canada, the federal government retains extensive control through the spending power, and the Senate cannot adequately represent regional interests. *Senate reform would bolster Canada's commitment to the federal principle by not only injecting a regional voice into parliament, but by building on a multi-faceted conception of equality that federalism is intended to encourage. Senate reform builds on Canadians' sense of individual equality, provincial equality, and lingusitic and cultural equality.*

- **The Supreme Court:** Since 1982, the Canadian Constitution has granted the Supreme Court a much larger role in national decision-making through the concept of judicial review and the Canadian Charter of Rights and Freedoms. But the Court is limited in its ability to act as a practical check because decisions take a long time and they are not inexpensive. More important, the Court is an unelected institution, with its Justices being appointed unilaterally by the prime minister. *A reformed Senate would shore up Canada's Supreme Court if all Justices were to be nominated by the prime minister but ratified by the Senate. This procedure could be extended to other appointments as well, curbing the extensive patronage powers of Canadian prime ministers.*

PRIMING THE DISCUSSION: A BRIEF LOOK AT "DEMOCRACY"

In order to "prime the pump" of this argument for Senate reform, it is necessary to first revisit the concept of democracy. The word democracy has its roots in the Greek words *demos* (people) and *kratia* (rule or authority). Obviously, the modern day concept of democracy carries meanings that go far beyond the original *demokratia* (rule by the people). Only in a few places and at a few times in history could *demokratia* ever be said to constitute a *pure* democracy – citizens taking an active role in day-to-day governing.

Today, democracy more properly refers to *representative* democracy, loosely defined as a system of government where those in primary positions of authority are elected by citizens to represent them in institutions of public decision-making. Representative democracy has evolved to encompass a wide variety of practices, traditions and institutions that differ from one democratic jurisdiction to the other, but the basic tenets remain the same – widespread citizen participation and public institutions supported by popular mandate.

The most obvious operational characteristic of democracy is its highly visible populist face – at the end of the day in a democracy, the majority prevails. The basic democratic equation is straightforward, and we all understand it: if a majority votes for party A, it wins and forms the government; if a majority in parliament votes for bill A, it passes and becomes law; if a majority votes "Yes" in a referendum, the vote is successful. Democracy, when examined on this most simplistic of levels, is merely an *outcome* which declares "winners" and "losers" based on sheer numerical strength.

But democracy is much more than simple majority rule. To better understand the concept, one needs to draw the distinction between democracy as an *outcome* and democracy as a *process*, a complex set of individual and collective actions, events and practices that eventually culminate in a particular outcome. At the end of the day in a democracy, the majority will prevail, but democracy also means that *on the way to the end of that day*, there will have been deliberation, discussion, persuasion, trade-offs, and even compromise. Compromise itself is held high in the pantheon of democratic values for no small reason – it implies a willingness to listen and a capacity to meet others partway rather than simply declaring winners and losers.

If *majority rule* is the defining feature of democracy as an outcome, then *minority right* is the defining feature of democracy as a process. Democracy's value as a way of organizing political life lies in the fact that it provides an avenue for a multitude of minority opinions to help shape, refine, tune and influence the majority opinion that eventually emerges. To illustrate, the democratic process is very much like a "conversation." When the conversation begins on a political question, society divides into a multitude of *self-defining minorities* – groups who by virtue of their unique interests, opinions, concerns and beliefs perceive themselves as holding a "minority" position on the issue. Self-defining minorities can include farmers, union members, small business owners, Aboriginal peoples, environmentalists, feminists, French Canadians, traditionalists, urban Canadians, rural Canadians, ethnic Canadians, corporate executives, doctors, retailers, consumers, new immigrants and any other potential group. Self-defining minorities aggregate on a multitude of dimensions, with members crossing from one "group" to the other depending on the question at hand. As a solution to the issue is pursued, these minority opinions feed into the democratic "conversation" and eventually an outcome is yielded based on a majority – but only after the minority has been factored into the process in a *meaningful* way.

This notion of minority right is critical to democratic theory and practice. Without it, democratic societies would be highly unstable, continually running the risk of fragmentation. A brief survey of history's greatest political thinkers reveals the degree to which "majority rule" and "minority right" are woven into democratic theory. Jeremy Bentham's principle of the "greatest happiness of the greatest number" clearly lays out the rationale for majority rule, but Alexis de Tocqueville, in his comments on America, railed against the inherent dangers in a democracy of the "tyranny of the majority." John Locke, one of the world's great political scholars, favoured majority rule but also maintained that individual rights must be safeguarded from violation by that majority. Jean-Jacques Rousseau also expressed a belief in majority rule but only if it were aimed at the broader public interest. John Stuart Mill was one of the first to propose proportional representation as a way to safeguard minority rights from naked majority rule.[3]

In other words, a democratic outcome can never become the sole preserve of any one group. In a democratic "conversation" there can be no group of actors continually having their say. Democracy, when working properly, obliges both citizens and governments to arrive at a position other than the one they held when the democratic "conversation" first began.

THE DEMOCRATIC PARADOX

Ultimately, there is a *paradox* at the core of democracy. On the one hand, the central value of democratic government is a majority decision after a process of consultation, persuasion and compromise – a government with a popular mandate has the capacity to act in fulfillment of that mandate. On the other hand, there is the longstanding liberal democratic tradition that views government itself as having a powerful potential for the abuse of power growing from the "tyranny of the majority" threat. Obviously, there is a balance between majority rule and minority right that can never be settled with absolute precision, but it must still be defined and even adjusted from time to time. There is a continual balance sought between ensuring that governments have sufficient power to accomplish their legitimate purposes and preventing governments from holding too much power, which would threaten civil rights and liberties.

Throughout history, a number of democratic innovations have been devised to combine majority rule with the protection of miniority rights. While each democratic country has its own set of unique devices and traditions to accomplish this, they all reflect a universally-shared objective: the deliberate *diffusion* of political power among various institutions and actors as opposed to the *centralization* of power within a single institution or the hands of a select few. A brief review of three democratic traditions demonstrates the point.

1. THE UNITED STATES

"In a society under the forms of which the stronger faction can readily unite and oppress the weaker, anarchy may as truly be said to reign as in a state of nature, where the weaker individual is not secured against the violence of the stronger..."

– James Madison[4]

The American Constitution balances "majority rule" with "minority right" by diffusing political power on several fronts. *Federalism* divides decision-making authority between the federal government and the state governments. Within the federal government, power is further diffused through a *separation of powers* between the executive (President), the legislative (Congress) and the judicial (Courts) branches. Each branch has constitutional independence, and a complex system of *checks and balances* allows each to delay, block, or even veto the actions of other branches. The U.S. Congress is further separated into the House of Representatives and the Senate. The House is the "majoritarian" chamber in that its members are elected on the basis of representation by population ("rep-by-pop") while the Senate is the "minority" chamber having an equal number of Senators (two) from each state, regardless of size.

2. SWITZERLAND

"Switzerland would cease to exist if a majority of any kind – linguistic, religious, political, or social – were to lay down the law. Switzerland can live in harmony only if everyone is anxious, above all, to avoid abusing power."[5]

The Swiss system of *consociational democracy* employs several devices to diffuse power and maintain national unity despite incredible linguistic, religious, and geographic diversity. First, the Swiss are strongly committed to *federalism* and the notion of *subsidiarity*, or making as many decisions at the local level as possible. Second, the Swiss electoral system is based on *proportional representation*, which makes it difficult for a single party to secure a parliamentary majority. Third, the political executive (called the Federal Council) operates on the principle of *power-sharing*. The Council is elected by parliament based on a formula which provides seats to parliamentarians from different political parties. The chair of the Council rotates among its members on an annual basis. Finally, the Swiss Parliament is a bi-cameral institution. The lower house (National Council) is "majoritarian" and is elected based on "rep-by-pop." Like the American Senate, the upper house (Council of States) represents regional minorities with two deputies from each canton (province). All legislation must pass both chambers of parliament.

The Swiss also make frequent use of another democratic tradition – *direct democracy*. In any given year, they vote in numerous referendums and popular initiatives. At first glance, this would seem to encourage "majoritarianism", but several features provide the necessary minority inputs. First, a successful petition for a popular initiative often jolts parliament into brokering a consensus for a "counter proposal" which is voted on at the same time as the citizens' proposal. Counter proposals are much more likely to be accepted in a referendum. Second, all referendums must pass a double-majority test – 50% plus one in the national vote, and 50% plus one in a majority of the cantons. The pluralistic nature of Swiss society has led to a highly decentralized decision-making process, and the threat of deadlock is dealt with by citizens who force the necessary compromise through threats of direct democracy. The Swiss have raised democratic trade-offs to a new level, and this has provided a remarkable degree of political stability and coherence to one of the world's most diverse nations.

3. CANADA

"Before 1865, a government's life was measured in months but afterwards by decades. Federation brought a change. Henceforth, the Prime Minister and his cabinet were to be the real governors and not the House of Commons. Even the cabinet was to be overshadowed by the Prime Minister, who by means of an enormous patronage put at his disposal by federation, would bestride the political world like a Colossus."[5]

Canada's democratic institutions borrow heavily from the British tradition. In theory, the primary check upon political power is parliament itself, which operates under the twin notions of *representative* and *responsible* government. Representative government means all members of parliament are chosen in regular elections and are accountable to the electorate. Responsible government holds that the political executive (the prime minister and the cabinet which are formed out of the "majority" party in parliament) is accountable to all the other members of parliament (the "minority" parties and the backbenchers of the "majority" party). In Canada, the prime minister and the cabinet must maintain the "confidence" of the Commons to continue governing. A key feature of responsible government is that the executive is required to continually justify its actions to parliament. This occurs through Question Period. The Canadian executive is also limited by other institutions and procedures. Like the U.S. and Switzerland, Canada is a *federal* country, which diffuses political power to provincial governments. The Canadian parliament is also a bi-cameral institution. The Commons reflects the majoritarian principle of "rep-by-pop" while the Senate was designed to represent regional minorities. Since 1982, the Constitution has also provided an increased role for the courts to review legislation in the light of the Charter of Rights and Freedoms.

DE-CONSTRUCTING CANADIAN DEMOCRACY AND THE NEED FOR SENATE REFORM

The essential balance struck between "majority rule" and "minority right" is not mere academic theory. Achieving a proper balance between the two goes to the heart of what it means to be a democratic country. The matter is particularly important for Canada because diversity is the quintessential Canadian characteristic. Whether it is geographical diversity, multicultural and ethnic diversity, economic diversity, or linguistic diversity, it is obvious that Canada is a highly pluralistic society, and this implies a great number of "self-defining" minority interests that need to find expression in our democratic institutions and practices. Finding an appropriate balance between "majority rule" and "minority right" is key if Canada is to avoid becoming the victim of centrifugal forces that different interests, concerns, and aspirations produce.

Democratic theory and international practice indicate that the decentralization of political power – both within federal institutions and between levels of government — is necessary to protect diversity and enhance democracy, yet a survey of Canada's institutions reveals a highly centralized process largely immune from effective checks and controls that is very disturbing. In fact, to describe Canada's national political institutions and conventions is almost to define the word centralization. What comes through again and again is the centrality of the prime minister. In no other western democratic federal system does any one single political actor exercise such significant amounts of political power. It is this fact that lies at the root of many of the political problems and frustrations that Canadians have been wrestling with for the past three decades, especially the seemingly endless struggle for national unity.

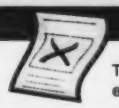
But there is a way out, and it lies in Senate reform. In all federal countries with the exception of Canada, the Senate serves as a front-line check on government by diffusing power and balancing the democratic outcome of "majority rule" with "minority right." Senate reform is Canada's best bet to rejuvenate our national institutions, inject a new and positive dynamic into our democratic practices, and better reflect Canadian diversity. To understand how Senate reform can achieve this, we can consider its relationship to five key democratic institutions (a summary is provided in ***Figure 1*** on page 6).

1. ELECTIONS

Elections are the most obvious point from which to launch an assessment of Canada's commitment to the democratic ideal. The primary purpose of free and open elections is to select a "representative" government that broadly mirrors the choices made by voters. Viewed from this angle, elections are merely outcome-based events that reflect the "majority rule" principle, and thus would seem to offer little in terms of diffusing power or providing inputs for "minority" opinions. To be sure, everyone can vote and all the votes are used in calculating the outcome, but when the polls close, there can only be one winner.

While elections are certainly about outcome, they are also about process. In theory, elections act as a limit on potential government excess because they force governments to constantly live under the shadow of the next vote – the moment when they are called to account by an electorate whose anger can be potent. But in reality, the effectiveness of elections as a check on any government is

Figure 1: Canada's Centralized Institutions

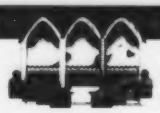


ELECTIONS

THEORY: Government faces the electorate every four or five years.

EFFECTIVENESS: Limited. Elections are infrequent, and elements of the process are centralized in the hands of prime ministers.

WHY SENATE REFORM: Elections to the Senate would add balance, taking place at fixed times separate from the Commons and under different rules and procedures.



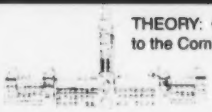
ELECTORAL SYSTEM

THEORY: Electoral systems yield a government representing the choices of voters.

EFFECTIVENESS: Very limited. Canada's plurality vote system does not produce a representative parliament that reflects the range of diversity existing in the electorate.

WHY SENATE REFORM: Senate reform provides our best opportunity to employ a new system (PR or STV) which more accurately reflects the diversity of opinions and preferences of the electorate.

PARLIAMENT



THEORY: Government is accountable to the Commons and the Senate.

EFFECTIVENESS: Very limited. The government is the majority and party discipline means it controls the Commons. The Senate is unelected and lacks legitimacy.

WHY SENATE REFORM: Senate reform is essential if Canada is to have a truly bicameral Parliament. The government can retain a large role in the Commons, but will have to draft legislation with the Senate in mind.

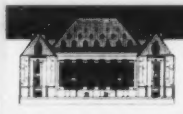
FEDERALISM

THEORY: Political power is diffused to provinces, and regions are represented in the national government.

EFFECTIVENESS: Limited. The spending power means Ottawa has extensive control. The Senate cannot act and the premiers now express the regional concerns.

WHY SENATE REFORM: Senate reform strengthens federalism by injecting a regional voice in the national parliament.

SUPREME COURT



THEORY: The Supreme Court can find legislation unconstitutional.

EFFECTIVENESS: Limited. Federal justices are unelected and are appointed unilaterally by prime ministers without formal review. Judgments are expensive and take time.

WHY SENATE REFORM: Most proposals for Senate reform envision that appointments to the Supreme Court (and other appointments) will have to be ratified by the Senate.

generally quite limited. First, the sanction of re-election is only effective when there is a credible alternative, lacking which the government has precious little to worry about. Second, elections remain somewhat isolated events. A four or five year spread between elections is a long time, and early in their mandates governments have little to fear.

If the potential of elections to serve as a check on democratic government is generally limited, then nowhere is this more true than in Canada. First, only half of Canada's national parliament is elected – Senators are appointed by prime ministerial fiat. Second, a number of practices have centralized elements of the election process in the hands of the prime minister. For example, prime ministers are generally free to determine when elections and by-elections take place, providing a significant tactical advantage for the governing party. (Many countries provide for elections on a fixed date which avoids the potential for a surprise election call.) In addition, prime ministers and the leaders of other political parties have veto power over all those who contest the election on behalf of the party. By approving and signing individual nomination papers, prime ministers can trump local constituency organizations. This helps ensure the loyalty of backbench MPs, control over the caucus, and in a majority government situation, dominance of the Commons. Also, Canadian prime ministers step down from their position only at their convenience. Through these centralized election practices, Canadian party leaders are now the singular focus of a general election campaign – more important than the local candidate and even the party's position on key issues.

A reformed Senate offers Canadians a way to increase the potential of elections to limit executive political power along two separate tracks. First, an elected Senate would remove the largest and most powerful patronage appointment from Canadian prime ministers. The effects of this should not be underestimated. Not only would Senate elections begin the process of separating the Senate from its current partisan and personal loyalties, an elected Senate would possess the necessary accountability and legitimacy to effectively check prime ministerial dominance in the Commons. Elections are critical to creating a new and functionally independent institution to check the political executive by occasionally confronting the majority government in the Commons, brokering amendments, or even defeating legislation.

Second, elections to the Senate can offset the centralized practices of elections to the House of Commons. Elections themselves are not necessarily enough to create an independent and less partisan Senate that can check the prime minister. Senatorial elections need to be functionally independent of elections to the Commons, and the "right" electoral procedures and practices must be put in place. In other words, practices which place elements of the election process in the hands of the prime minister must not infect the Senate. Thus, most proposals for Senate reform envision an entirely

FIGURE 2: Plurality Vote and the 1997 Election (% of Popular Vote and % of Commons Seats)

Province or Territory	LIBERAL		CONSERVATIVE		REFORM		NDP		OTHER	
	Vote	Seats	Vote	Seats	Vote	Seats	Vote	Seats	Vote	Seats
British Columbia	28.8%	17.6%	6.2%	0.0%	43.0%	73.5%	18.2%	8.8%	3.7%	0.0%
Alberta	23.1%	7.7%	15.4%	0.0%	54.7%	92.3%	5.8%	0.0%	1.2%	0.0%
Saskatchewan	24.7%	7.1%	7.8%	0.0%	36.0%	57.1%	30.9%	35.7%	0.6%	0.0%
Manitoba	34.3%	42.9%	17.8%	7.1%	23.7%	21.4%	23.2%	28.6%	1.1%	0.0%
Ontario	48.5%	98.1%	18.8%	1.0%	19.1%	0.0%	10.7%	0.0%	2.9%	1.0%
Quebec	36.1%	34.7%	22.2%	6.7%	0.3%	0.0%	1.9%	0.0%	*39.5%	*58.7%
Nova Scotia	28.4%	0.0%	30.1%	45.5%	9.7%	0.0%	30.4%	54.5%	0.8%	0.0%
New Brunswick	32.9%	30.0%	35.0%	50.0%	13.1%	0.0%	18.4%	20.0%	0.6%	0.0%
Newfoundland	37.9%	57.1%	36.8%	42.9%	2.5%	0.0%	22.0%	0.0%	0.9%	0.0%
PEI	44.8%	100.0%	38.3%	0.0%	1.5%	0.0%	15.1%	0.0%	0.3%	0.0%
NWT	43.1%	100.0%	16.7%	0.0%	11.7%	0.0%	20.9%	0.0%	7.6%	0.0%
Yukon	22.0%	0.0%	13.9%	0.0%	25.3%	0.0%	28.9%	100.0%	9.9%	0.0%
Canada	37.3%	51.5%	18.7%	6.6%	19.1%	19.9%	10.9%	7.0%	12.7%	15.0%

SOURCE [illegible]

different set of constituencies (usually province-wide) with fixed election dates (regular elections on the same day each time). If the Senate is to be elected on the same day as the Commons using the same constituencies and the same practices, the Senate will simply be a photocopy of the Commons and the dominance of national political parties and their leaders will spill into the Senate. Senate reform is much more than that.

2. THE ELECTORAL SYSTEM

The electoral system is the mechanism that transforms the votes of citizens into legislative seats. The operational characteristics of any electoral system are highly complex and critically important to any discussion about democracy. Electoral systems have no small impact on the creation of a representative government and the degree to which a society's diversity is reflected in the national parliament and the provincial legislatures. This fact obliges us to take a very close look at this institution before assessing how Senate reform can strengthen this aspect of Canada's democracy.

Canada uses a *single-member plurality vote* or *first-past-the-post* electoral system. The plurality vote has several advantages. First, it is very easy to understand. The one candidate who secures the most votes in an election wins that election, whether those votes constitute a majority or not. Second, the system divides the country into constituencies, each of which each elects only one representative. Plurality vote therefore establishes a direct connection between a single representative and a clearly defined territory. Third, because the critical factor is "one-more-vote-than-anybody else" this electoral system tends to generate stable "majority" governments in parliament, even when no such "majority" exists among the electorate.

The plurality vote system is generally restricted to Britain and those countries that were once British colonies – places such as the United States, Canada, and India. It is rarely used elsewhere. While no electoral system is perfect and entirely neutral, plurality vote has a number of distorting effects that arguably make it one of the worst of all systems, exacting a toll on our democratic sensibilities.

First, if the plurality vote's major advantage is producing stable parliamentary "majorities" then that is also its main disadvantage. How "democratic" is it when a party's share of parliamentary seats can be so radically different than that same party's share of the popular vote? A quick look at the 1997 federal election proves the point ***(Figure 2)***. In the last federal election, the governing Liberal party garnered 37% of the popular vote nation-wide, but because of the distorting effects of plurality vote, it captured 51% of all the seats to form a majority government. The Conservatives received about the same percentage of the popular vote as the Reform Party (19%) but Reform captured 60 seats and the Conservatives only 20. [7]

The distorting effects of plurality vote are both pervasive and persistent – the 1997 election was not an anomaly. When we examine the last 30 years of federal elections, the point is driven home ***(Figure 3)***. Since 1968, Canadians have voted in nine federal elections, with seven resulting in a "majority" government. However, only one of those majorities was not the result of the distorting effects of the plurality vote system.

FIGURE 3: Thirty Years of Federal Elections

Election Year and Governing Party	% of Popular Vote	% of Seats in Parliament
1997 (Liberal)	37.3%	51.5%
1993 (Liberal)	41.3%	60.0%
1988 (Conservative)	43.0%	57.3%
1984 (Conservative)	50.3%	74.8%
1980 (Liberal)	44.3%	52.1%
1979 (Conservative)	35.9%	48.2%
1974 (Liberal)	43.2%	53.4%
1972 (Liberal)	38.5%	41.3%
1968 (Liberal)	45.5%	58.7%

SOURCE: [illegible]

Second, plurality vote tends to produce artificial parliamentary majorities in a certain way – by exaggerating and amplifying regional and provincial differences in terms of support for the various political parties.[8] Returning to ***Figure 2,*** we see that Reform earned 55% of the popular vote in Alberta, but captured 92% of that province's seats. In Ontario, the Liberals secured 49% of the popular vote but won 98% of that province's seats. Plurality vote causes parties to visibly split along regional lines even when such splits exist only marginally in the electorate. The standard comment about partisanship in Canada today is that Reform is an Alberta and BC phenomenon, the Liberals dominate Ontario, and the Conservatives have a hold in Atlantic Canada. But this is a misguided conclusion. The Liberal Party is certainly more popular in Ontario, but they also have significant support in the West, just as Reform had no small degree of support in Ontario. The optical illusion created by plurality vote adds further stresses and strains on national unity if only because it creates misperceptions about partisan preferences across the country. If an important tenet of democracy is regular elections to create a representative parliament reflecting the choices of voters, plurality vote is letting Canadians down.

While plurality vote distorts the democratic principle of "majority rule" it also offers little in terms of the balancing democratic principle of "minority right." A third problem with the plurality vote system is that it favours large political parties by "shutting out" smaller parties and the unique perspectives they represent. This happens because candidates can win election without securing a majority of the vote and it is only the larger parties which typically attract the single largest group of electors. Plurality vote favours large parties and those with support concentrated in a particular region over smaller parties with thin support across numerous regions. Once again, we can turn to the 1997 federal election to illustrate. If we think of parliamentary seats as being purchased, and votes as the money that parties use to buy these seats, then for some parties, election day was $1.49 day. Given that 13 million Canadians cast votes and 301 MPs were elected, the average seat should have "cost" 43,000 votes. But the party with the largest individual vote count (Liberals) "spent" less than 32,000 votes for each of their seats. The 60 spots "purchased" by the Reform Party were also a good deal at about 42,000 votes per seat. But at the other extreme, the Conservatives were forced to pay dearly for their 20 seats. In fact, it "cost" them three times as many votes as it should have. The 250,000 Canadians who cast their votes for parties other than the "big five" really lost – their votes resulted in no representation in the parliament.

But this point can be pushed even further. It is not just smaller political parties that suffer frustration within this system. Fourthly, plurality vote leaves behind many self-defining minority interests (whether they be women, aboriginals, farmers, or environmentalists). At first glance, this seems somewhat far-fetched. How can an electoral system disadvantage women, aboriginals, or other minorities? The logic is quite clear, and it works down several simple and mutually reinforcing tracks.

First, the nomination for a political party with a reasonable chancing of winning a seat is something of value for many people. In this competition, individuals with wealth, status, personal connections, and a high community profile will tend to have an advantage. Typically, the individuals who possess these assets tend to be middle class, middle aged, caucasian males who own a business or have a professional career. People with these "magic" attributes do not automatically win, but they tend to win more often, and the more of the five attributes you have, the more likely you are to succeed. Second, the local party association involved in the candidate selection process is very concerned with finding the one candidate who has the best chance of winning. The more competitive the seat, the more important it is that they find the most appealing candidate – the one who can draw those last twenty votes to put the party over the top. Not surprisingly, this is often the candidate who has most or all of the attributes above.

No one will deny that women or other visible minority candidates are capable of serving as representatives. And no one will deny that such candidates may also attract additional votes by virtue of their gender or their attachment to a specific "minority." But historically, the worry has always been that

such a candidacy will also lose the party some votes. To put it more bluntly – if you want to win, give the voters what they want. And, it has long been conventional wisdom that voters prefer candidates who are middle class, middle aged, caucasian male businessmen or professionals. Thus, a multitude of minority interests are often left behind in the plurality vote system because a premium is placed on candidates who can appeal to the largest single group of electors. The system discriminates against the many diverse interests that are located in any one constituency by appealing only to the single largest electoral denominator.

Admittedly, this problem may not be as true as we have been led to believe, and it is likely less valid today than it was 10 or 20 years ago. But the tendency is still to play it safe. ***Figure 4*** illustrates the point by comparing the electoral system used in several countries to the percentage of parliamentarians who are women. Without exception, those countries with a single-member plurality system land squarely at the bottom of the table, while those with a multi-member "proportional representation" system are at the top. To be sure, there are a number of other factors that might be in play here, such as political culture. But the correlation between the two is nonetheless striking.

FIGURE 4: % of Women in Various Parliaments

System	Country	% Women
Proportional Representation	Sweden	42.7%
	Denmark	37.4%
	Norway	36.4%
	Netherlands	36.0%
Average 34.0%	Finland	33.5%
	Austria	26.8%
	Spain	25.4%
Mixed System	Germany	30.9%
	New Zealand	29.2%
Average 19.0%	Italy	11.1%
	Japan	4.6%
Single Member Plurality	Australia	22.3%
	Canada	17.3%
Average 16.7%	United States	11.7%
	France	10.9%

SOURCE: *Alan Siaroff, Comparative Female Representation in Legislatures and Cabinets*

Another example of how plurality vote limits the representation of minority opinions and perspectives can be shown by the issue of aboriginal representation. Currently, aboriginal peoples (status and non-status) constitute about 3% of the population of Canada – the equivalent of a province like Saskatchewan. While Saskatchewan has 14 MPs who speak for the province, according to the 1992 *Royal Commission on Electoral Reform,* this is higher than the total number of aboriginal people who have ever been elected to the Commons. In any given election, there is no guarantee that the number of aboriginal MPs will necessarily be larger than zero. Again, the reason is simple. With a plurality vote system, groups that are thinly spread across several ridings find it very difficult – almost impossible – to gain representation.

From time to time, various proposals have been advanced to overcome this tendency of the plurality vote system. For example, some of the national parties have taken firm steps to address the issue of women candidates. The federal NDP has set itself a target of an equal balance between male and female candidates, and the leader of the Liberal party has been given the power to name candidates in a specific number of ridings without reference to the local association – a power frequently used to put women candidates in competitive ridings. In addition, the *Royal Commission on Electoral Reform* recommended the creation of special "aboriginal ridings" as a way to increase aboriginal representation.

Certainly, these measures can be effective, but they are also ad hoc, arbitrary, and some would argue highly "undemocratic." Hand-picking special candidates involves bypassing the elected nomination process, and pre-designating voters for representation on racial grounds is a principle that would make most Canadians uneasy. These measures are hardly the ideal, and have become necessary only because Canada's electoral system creates a "rut in the road" which steers the candidate selection process toward the over-representation of one particular type of group within society at the expense of all others.

Finally, the plurality vote produces a host of oddities that together distort the very purpose of voting itself. With plurality vote, sometimes you are simply further ahead "playing the rules" instead of "playing the game." From the political party's perspective, we can point to a number of examples. First, because the critical factor is "one-more-vote-than-anybody-else" there is always a constant temptation to manipulate the size or boundaries of constituencies for the benefit of specific political parties. The words *gerrymander* and *malapportionment* are terms that only have meaning in a plurality vote system. A second example is the whole notion of a *spoiler* – running a candidate for a party not in the hope of winning a seat, but simply to draw enough votes from Party A so that Party B wins. This logic explains the recent scandal in Manitoba, where funding was allegedly made available to independent candidates to split the vote. A spoiler strategy only makes sense in a plurality system. It is meaningless in any other system.

There are also examples from the voter's perspective. The plurality vote system leads some voters to cast their ballot for a candidate other than their first choice. One example of this is *strategic voting*. To illustrate, imagine a voter that supports the New Democratic Party (NDP) and strongly opposes the Canadian Alliance. The voter lives in a riding where the Alliance candidate is expected to get 45% of the vote and the Liberal candidate is expected to come in a close second. In this scenario, voting NDP is not likley to produce a win for the NDP nor does it help defeat the Alliance. If the Liberal candidate is the voter's second choice, the *strategic* option is to vote Liberal in an attempt to ensure the Alliance does not win the seat. Another example is the *don't waste your vote* phenomenon, which refers to those voters who avoid candidates that have no realistic chance of winning. This practice draws votes away from the smaller parties, and is another way of ensuring that they will always remain small.

Canada's electoral system tends to promote a homogenous type of representation that is at odds with the diverse nature of Canadian society. Our electoral system has a persistent and pronounced *centralizing* effect on parliament – rewarding large parties, traditional candidates, and the prime minister who is often handed a majority government when no majority exists in the electorate. But while Canadians have talked about electoral reform for decades, it is widely recognized that the chance of changing the electoral system is slim. Senate reform offers a clear way out by providing an ideal opportunity to supplement and balance the plurality vote with a new electoral system.

Virtually every proposal for Senate reform suggests that we avoid plurality vote and use some form of multi-member proportional representation (PR). While there are many different types of PR, all share three essential features. First, the constituencies cover a large geographical territory. Second, each constituency elects more than one representative. Third, PR tends to accurately translate the votes of electors into legislative seats – if 20% of the electors in a province vote for Party A, then Party A will secure roughly 20% of that province's seats.

A Senate elected under PR would inject balance into parliament and the debate over national policies and priorities in two ways. First, it would result in a more representative parliament. Second, a Senate elected under PR would allow all political parties to be represented – as they should – from the different parts of the country. ***Figure 5*** shows a "thought experiment" where the Commons is elected under plurality vote and the Senate is elected under some form of PR using province-wide constituencies. (For purposes of the model, we have assumed a "Triple-E" Senate that is *elected, effective* and has an *equal* number of Senators from each province and territory – ten from each province and two from each territory). By superimposing the popular vote of the 1997 election on this new parliament, it is clear that a Senate elected under PR would look very different than the Commons. In 1997, the vote breakdown in Ontario was 50% Liberal, 20% Reform, 20% Conservative, and 10% New Democrat. Under plurality vote, the Liberals captured all of the Commons seats except two. But a much different picture emerges in the Senate. In Ontario, five Liberal Senators, two Conservatives, two Reformers and one NDP would have been elected. This pattern repeats itself in all regions and provinces of the country.

FIGURE 5: A PR Electoral System Yields a More Democratic Parliament

Province or Territory	LIBERAL			CONSERVATIVE			REFORM			NDP			OTHER		
	%	H of C	Senate	%	H of C	Senate	%	H of C	Senate	%	H of C	Senate	%	H of C	Senate
British Columbia	28.8%	6	3	6.2%	0	1	43.0%	25	4	18.2%	3	2	3.7%	0	0
Alberta	23.1%	2	2	15.4%	0	2	54.7%	24	5	5.8%	0	1	1.2%	0	0
Saskatchewan	24.7%	1	2	7.8%	0	1	36.0%	8	4	30.9%	5	3	0.6%	0	0
Manitoba	34.3%	6	4	17.8%	1	2	23.7%	3	2	23.2%	4	2	1.1%	0	0
Ontario	48.5%	101	5	18.8%	1	2	19.1%	0	2	10.7%	0	1	2.9%	1	0
Quebec	36.1%	26	4	22.2%	5	2	0.3%	0	0	1.9%	0	0	39.5%	44	4
Nova Scotia	28.4%	0	3	30.1%	5	3	9.7%	0	1	30.4%	6	3	0.8%	0	0
New Brunswick	32.9%	3	3	35.0%	5	4	13.1%	0	1	18.4%	2	2	0.6%	0	0
Newfoundland	37.9%	4	4	36.8%	3	4	2.5%	0	0	22.0%	0	2	0.9%	0	0
PEI	44.8%	4	4	38.3%	0	4	1.5%	0	0	15.1%	0	2	0.3%	0	0
NWT	43.1%	2	1	16.7%	0	0	11.7%	0	0	20.9%	0	1	7.6%	0	0
Yukon	22.0%	0	0	13.9%	0	0	25.3%	0	1	28.9%	1	1	9.9%	0	0
Canada	37.3%	155	35	18.7%	20	25	19.1%	60	20	10.9%	21	20	12.7%	45	4

Critics will be quick to point out that PR seems to produce some distortions of its own. The NDP secured 11% of the popular vote nationally, but they won 20 of 104 Senate seats in the thought experiment – 19% of the total. While the Bloc received about 11% of the national vote, they received only 4% of all Senate seats. Again, no electoral system is perfect, and with PR, small distortions at the provincial level can be magnified nationally. But these distortions are much smaller than those created by plurality vote, and more important, they work in the *opposite* direction. While plurality vote distorts both provincial and national results by rewarding only the larger political parties and those who "pack" their support within a few provinces, PR seldom distorts the provincial vote, and it produces a very accurate provincial and national result for the huge, broadly-based parties. It is only in the case of small and narrowly-defined regional parties, and parties that are broadly-based but with relatively thin support across that base, that distortion seems to occur. PR can punish the first type of party and reward the second type. So in the end, PR serves to balance the distortions produced by plurality vote – when the two systems work together, they can offset each other and yield a much more representative parliament.

This point can be pushed further, because there are two simplifying assumptions here that do not hold up under closer scrutiny. First, our scenario suggests that ten Senators be elected. Thus, the threshold for election would be 10% (100% of the votes divided by ten seats equals 10%). Our model in ***Figure 5*** makes the assumption that parties who narrowly miss this 10% threshold for a Senate seat will eventually secure that seat. This assumption is speculative, but necessary. In a PR system, each candidate must meet the threshold to get elected, but the popular vote does not always split nicely. For example, 70% of the vote might go to seven candidates who earned 10% each and are thus elected, but the other 30% of the vote might be shared by six others who earned only 5% each. How are the last three seats to be allocated? Suffice to say, each PR system has a way of solving this apparent dilemma. In STV, for example, the electorate votes for a first, second and third choice, and these second and third choices are counted to distribute the seats that are not won on the first round. Because we cannot apply a process like this to our model, we have assumed that the parties who are closest to the 10% will simply win the seat. As a result, we are seeing some distortion here that would not exist in reality.

Second, we have also assumed that voters will cast ballots in a PR election in the same way that they now cast them for the Commons. But this is also unlikely because considerations like strategic voting and vote-splitting will not exist, and parties that are too small for any realistic chance of gaining a Commons seat under plurality vote will be much more inclined to contest a Senate seat under PR. In other words, voters will likely vote differently in elections to the Senate because there will be more parties contesting the elections.

Plurality vote blurs the electorate into composite packages that reward only the large parties that try to be "all things" to "all people." But this dynamic does not exist with PR. Smaller parties with more focused platforms would have more opportunity to present themselves and voters could either reward or punish these focused positions. Again, the threshold for one Senate seat is only 10% of the popular vote province-wide. A level of support this low would condemn any party to perpetual frustration under plurality vote, but it guarantees at least some success in a PR system. PR would create a Senate that more accurately reflected the nuances of partisan opinion by establishing a tighter linkage between vote share and seat share. The result is a Senate that provides a precise snap-shot of voter preferences, and since such representation is an important dimension of the electoral process, democracy is enhanced by the result.

Opponents to any type of PR system rightly argue that it "fragments" representation – producing many parliamentarians from a host of small parties with none constituting a majority. But this cost is not being applied to the Commons. Although many European countries pay this price and find it quite tolerable, there is no need to abandon the plurality vote system for the Commons. The point of a reformed Senate is to check the Commons and not replace it. As such Senate reform offers Canadians the best of both worlds – a "mixed" system with plurality vote in the Commons and PR in the Senate.

But it is not only political parties and other organized groups that will benefit from a reformed Senate elected under PR. Members of self-defining minority groups will also find it easier to gain representation in the Senate. Under PR, the one candidate who leads in the polls is not the only one elected since each constituency elects at least more than one member. With 10-member province-wide constituencies, candidates representing a particular minority consideration can be successful with only 10% of the vote. Even if 70% of the voters had a really strong preference for "traditional" candidates (and this implausibly high) they could only win seven seats, leaving the other three for everyone else.

As a result of this new dynamic, parties would find it very desirable to present a balanced and diverse slate of candidates. The rationale is clear – the sheer size of the constituency (province-wide) includes a wide range of minority opinions and preferences that have little voting power in a small single-member plurality vote riding, but can aggregate on a provincial level to make their electoral presence felt. If the threshold for election is only 10%, it is safe to assume that "traditional" candidates will not be the only winners.

Some will argue that PR will do nothing of the sort, and point to the "party list" version as their evidence. In this particular breed of PR, voters cast ballots only for a party, and the party itself "ranks" its candidates on a list. If the number of candidates to be elected in a province-wide constituency is ten, then each party has ten candidates on its list. Candidate are then ranked by the party to determine their place on the list. If the party wins 30% of the vote, then only the top three on the party list would go to the Senate. Thus, opponents claim that PR leads to an obvious trap – if middle class, middle-aged, caucasian business or professional males have the most influence within most parties, then they will use that influence to put themselves at the top of the party list, and in the end only they will go to the Senate.

But this concern is misplaced, because it focuses only on the "party list" version of PR. There are other versions which do not allow the parties to determine the ranking of their own candidates. For example, in the "personal vote" system of the Netherlands, voters choose both a party and a candidate within the party list. The party's share of the vote determines how many seats they win, and the candidates' share of the vote within the list determines who fills those seats. In STV (the single transferrable vote used in Australia) people do not have to vote for a party at all. Rather, voters rank as many candidates as they choose in order of preference. These preferences can be "packed" within a single party's list, but they need not be. Voters can support only women, or ecologically concerned candidates, or candidates of a particular religion, or farmer candidates. And they can do so regardless of the party to which these candidates belong.

Some have suggested that we should "lock in" this broader representation by building it into the design of a reformed Senate or even the Commons through quotas. But this unnecessary. The multi-member PR system will open up the representation of women, visible minorities, and other self-defining minority groups. It is only with the single-member plurality vote that the alleged "majority" of voters preferring "traditional" candidates can have their relentless way by dominating the nomination process within the parties, and then dominating the vote at the constituency level during the actual election.

3. PARLIAMENT

Other democratic countries that use the plurality vote system always balance it with certain parliamentary practices, such as an effective party caucus in the Commons (Britain) or a bicameral parliament with an effective Senate (United States and Australia) that act as a buffer to centralized power. But in Canada, neither of these institutions and practices operate effectively.

The Commons that once challenged Kings in Britain is supposed to challenge prime ministers and their cabinets today through the notion of responsible government. If the government loses a vote in the Commons, "confidence" is lost and the government must resign. In the British Parliament, government and opposition backbenchers often form groups to bargain with the prime minister and the cabinet for concessions or changes in draft legislation. If the prime minister and the cabinet refuse, backbenchers can threaten a "non-confidence" vote. The smaller the government's majority in the Commons, the greater the power of even a small group of government backbenchers to defy the party leadership, unite with opposition members, and take a firm stand with "non-confidence" as the weapon. But in Canada, there are only two conditions under which the Commons can check the power of any government – when their majority is slim and the votes of a few backbenchers could topple the government, or when the government is at the mercy of another party on which its minority coalition depends. Both instances are rare. Typically, the Commons cannot even temporarily frustrate the will of a prime minister. In Canada, governments face some political embarrassment in Question Period, but nothing worse.

There are two reasons why responsible government in Canada does not function as intended. First, as we have seen, the electoral system tends to produce majority governments in the Commons. This ensures that government MPs outnumber opposition MPs, and effectively neutralizes any threat of a "non-confidence" vote from the opposition side. Second, party discipline then ensures that all government MPs "toe the party line" and vote with the government. The notion of party discipline has radically altered the Canadian House of Commons – rather than the Commons keeping the prime minister on a leash, it is the Commons that now wears the collar.

The highly disciplined political party is a relatively new phenomenon, the result of a number of circumstances and practices that have gradually centralized power in the hands of prime ministers. First, MPs will naturally express a

certain amount of personal loyalty to the party of which they are a member. But in today's age of mass communications, a premium has been placed on this loyalty because most MPs realize that voters typically look beyond them to the national party leader when they cast their ballots.

A second and more important reason for the rise of party discipline are the "carrots" and "sticks" at the disposal of Canadian prime ministers. Among the "carrots" are small enticements that build loyalty among government MPs, such as a "photo-op" or a visit by the PM to the local constituency, but also include the impressive and seemingly endless arsenal of patronage powers at the hands of prime ministers. Canadian prime ministers unilaterally appoint all members of the cabinet, which ensures that upward mobility within the government is linked to loyalty, and they also appoint all chairmanships of Commons committees, again ensuring that backbench MPs remain loyal to the party and the prime minister's agenda. Prime ministers unilaterally appoint all Senators, Directors and Governors of the Bank of Canada, the Justices of the Supreme Court, and a host of senior and junior appointments that can be doled out to supporters such as ambassadorships and other diplomatic postings, as well as directorships on boards of Crown Corporations and a host of government agencies. Topping off the list is the symbolic appointment of Canada's head of state, the Governor General, as well as the Lieutenant Governors of each province.

Third, the disciplined political party is a natural outgrowth of the way party leaders in Canada are now chosen. In the traditional British model, prime ministers are elected by the party caucus, and they are removed in the same way. (Recent examples of this include the ouster of Margaret Thatcher as PM in Britain and Bob Hawke in Australia.) But in Canada, the caucus has been marginalized in the leadership selection process. Traditionally, leaders were chosen by elected delegates representing the larger membership at leadership conventions. But since the early 1990s, Canadian leaders are now elected through nation-wide votes of the entire membership, which expands during the leadership campaign and then contracts after the vote is held. Arguably, this is a more "democratic" process in that every member has a vote, but it has also diminished lines of accountability as the caucus is marginalized and the group that elected the leader tends to evaporate after the vote. The result has been a centralization of power in the hands of party leaders. Prime ministers used to serve under the watchful eye of the party caucus, but the caucus now serves under the watchful eye of prime ministers.

Because of party discipline, backbench government MPs seldom muster the courage to challenge prime ministers. But from time to time, it does happen. Then, the "stick" comes out. The prime minister can refuse an MP's nomination paper at the next election, take away a committee chairmanship, or even expel MPs from the caucus, virtually guaranteeing defeat at the next election.

In theory, Canada's House of Commons and Senate constitute a bicameral parliament, the purpose of which is to diffuse power within the legislature by having each serve as a check on the other. But for the most part, bicameralism in Canada is an empty term – the Senate is a toothless tiger that has long forgotten how to roar. Most Canadians can easily pinpoint the primary deficiency of the Canadian Senate – it is unelected. This packs a double whammy. First, the absence of a popular mandate means that the Senate is unaccountable to voters. Second, the Senate cannot act with legitimate authority – when the Senate opposes the Commons, it is accused of "frustrating democracy" by blocking the will of the elected Commons. In the end, Canada's parliament tends to give free reign to most prime ministers. The power of patronage keeps MPs in line and also ensures a docile Senate.

A reformed Senate is Canada's best bet to check the power of the political executive, because this is primarily a legislative (or parliamentary) function. What is needed is a new institution that can "break the back" of party discipline which is at the heart of the centralized power exercised by Canadian prime ministers.

The rise of party discipline means that national issues are often debated not on the basis of their merits or potential solutions, but within the heated confines of partisanship and conflict. A reformed Senate offers a clear way out by providing a breath of fresh air from the stifling influences of the disciplined parties and their entrenched ideological positions. Thus, creating a less partisan body is just as key to Senate reform as electing its members. The whole point of a bicameral parliament is the presence of an independent body that represents citizens on a different basis and will on occasion confront the majority government in the Commons. This will be impossible if the same partisan interests which reign in the Commons also capture the Senate.

As such, Senate reform has always envisioned several key functional changes. First, Senators should not be allowed to serve in Cabinet. This would remove a powerful perk of party discipline. Second, the Senate would not be a "confidence" chamber. In other words, a vote against the government in the Senate would not force the government to resign and call an election. These measures are hardly

grandiose, but they do remove powerful incentives to toe the party line, freeing Senators from the prime minister's arsenal of "carrots" and "sticks" and allowing them to exercise independent judgement.

Critics have pointed out the obvious threat that this represents. If the Senate becomes too independent and begins marching to a radically different drum than the Commons, we run the risk of sinking into hopeless deadlock. Admittedly, deadlock is a possibility, but that is the very point of diffusing power. Prime ministers and their cabinets will have to learn to construct legislation with the Senate in mind. If this is not possible, special mechanisms can be used to break the deadlock. Some parliaments use joint sittings, but the better option for Canada might be an extraordinary majority vote in the Commons to over-ride the Senate. Such a vote could be a straightforward two-thirds majority, or it could be modeled after the 1982 constitutional amending formula – a majority of the members from two-thirds of the provinces representing 50% of the population.

4. FEDERALISM

Federalism balances "majority rule" and "minority right" by diffusing political power and providing checks against executive authority. To achieve this, it employs two mechanisms. First, the *division of powers* assigns specific responsibilities to two distinct orders of government. This is intended to embrace economic, social, cultural, and political diversity by providing for a degree of local control. Second, federalism implies a *Senate* which helps to ensure that national policies are not only agreeable to a majority of citizens in the country (represented by the Commons) but also to a majority of citizens in a majority of the provinces (represented by the Senate).

On the surface, Canada seems to have a functioning federalism with both a Senate and a decentralized division of powers. But Canada's Senate is largely irrelevant, and the federal government has assumed a high degree of control over many important areas of provincial responsibility through the *spending power* – the ability of the federal government to tax and spend. With huge financial resources at Ottawa's disposal, the provinces have been drawn into a complex set of intergovernmental fiscal transfers to help them provide essential public services. However, many of these transfers are conditional – in order for the provinces to receive the federal funds, they must comply with certain standards, many of which have been unilaterally established by the federal government. In other words, "provincial jurisdiction" does not at all mean that provinces are always free to tailor public services to meet their own unique local needs and desires.

Canada's system of federalism has become increasingly centralized over the last 40 years. This trend is widely acknowledged, and needs no further explanation other than to re-emphasize the degree to which it has also caused friction within Canada. For example, we can point to how quickly Alberta was chastised for imposing facility fees for some medical treatments, and how British Columbia was penalized for attempting to impose a three-month waiting period before new residents could access social assistance. An expanded role for Ottawa has given Canadians an impressive social safety net, and this is no small consideration, but unilateral federal action has also been blamed for creating stresses within the federation by removing essential sensitivities to local concerns and aspirations which federalism is intended to encourage.

At first glance, the unique Canadian institution of the *First Ministers' Conference (FMC)* seems to offer some potential as a check on the prime minister, but on closer inspection it too is little more than a paper tiger. Prime ministers play a central role in the FMC process by calling the meetings, setting the agenda, and retaining the right to ignore the outcome. The First Ministers' Conference is not a body which makes decisions on majority vote, and even when the Premiers can form a united front (which does not often happen as they are a diverse group drawn from different political parties pursuing different priorities) they have no way of obliging an outcome upon a reluctant prime minister. In the end, the FMC has little formal decision-making ability.

More than most Canadians realize, our system of federalism has contributed to a decline in national unity. The division of powers has become increasingly centralized in Ottawa, and this has become the target of Quebec nationalists. The Senate remains ineffective and this has fueled "alienation" in the West. Ontario and Atlantic Canada are left in the middle, desperately looking for a solution. Senate reform would help strengthen national unity and improve intergovernmental relations by reviving a system of federalism that seems to be floundering.

First, a reformed Senate would strengthen federalism by injecting regional sensitivities into the national parliament. Because the Senate cannot act legitimately, the role of regional spokesperson has defaulted to the premiers, and Canada continues to pay the price – federal-provincial relations that are marked by suspicion, conflict, and even outright hostility. The only way premiers can bring any pressure to bear is to "huff and puff" and "squeal and squawk" on the sidelines. A reformed Senate would remove this function from the premiers, separate it from their political agendas, and increase the credibility of parliament as Canadians began looking to Ottawa as a way to promote their interests and concerns.

At first glance, this appears to be nothing more than the noisy rumble of regional representation – the percussion section of the Senate reform orchestra whose drum beat is very familiar. But there is an important second point to be made. A Triple-E Senate (elected, equal and effective) is an important addition to Canadian federalism and national unity because it offers one of our only opportunities to respect the full range of Canada's diversity while building on another core democratic principle – *equality*. In terms of regional representation, the equality that we typically mention is "equal representation" of the provinces. But this is only one aspect of "equality" in terms of Senate reform. Federalism keeps diverse countries together by decentralizing decision-making through a *multi-faceted* conception of equality that does not smother diversity. In other words, Senate reform is about representing diversity and respecting a myriad of "equalities" – whether it is individual equality, provincial equality, or linguistic and cultural equality.

With a reformed Triple-E Senate, Canadians living in the small provinces win. Senate reform builds on our sense of *provincial equality* by providing an equal number of seats in the Senate to every province regardless of size. With a reformed Triple-E Senate, Canadians in Ontario win. A reformed Triple-E Senate builds on our sense of *individual equality* by providing for true "representation by population" in the Commons. Currently, Ontario is under-represented in the lower house by at least ten seats. With the exception of Quebec, all other provinces are over-represented. This is the result of ad hoc attempts to provide "regional representation" in the Commons – a role for which it was never designed. So while Ontario would lose seats in the Senate, it would gain influence in the Commons. With a reformed Triple-E Senate, Quebecers win. Senate reform builds on our sense of *linguistic and cultural equality*. Canada's two official languages are recognized as constitutionally equal, but that is where the practical relevance ends. Proponents of a Triple-E Senate are not at all oblivious to the powerful symbolism of reducing Quebec's representation in the Senate, so many proposals for reform envision a mechanism to offset this reduction and ensure the equality of English and French-speaking Canadians. By ensuring that all linguistic and culturally sensitive legislation is subject to a double-majority vote in the Senate (a majority of English-speaking Senators and a majority of French-speaking Senators) Quebec's receives a much larger say through a practical and useful Senate veto.

Senate reform is essential in repairing Canadian federalism. It respects diversity and builds on our shared notion of equality. It is not just smaller provinces who will "win" with a Triple-E Senate. All Canadians win because it offers everybody something, not the least of which is a better prospect for a united Canada.

5. THE SUPREME COURT

In Canada, the Supreme Court stands over government as an arbiter of federalism and a watchdog of citizen liberties through the concept of judicial review. But the Court can serve only as a limited check. First, the Court is the creature of a federal statute, and its powers can be (and have been) altered by the government. Second, judicial decisions are typically rendered after a bill becomes law. The mere presence of the Court may encourage government to accept amendments in the face of a possible legal appeal, but once a bill becomes law, the Court can only rule the legislation unconstitutional – the Court cannot spur constructive amendments. Third, court judgements never happen overnight. The long lead time and the costs of pursuing a case limit the Court as a practical check. Finally, and most important, the Supreme Court is an unelected institution. Compounding this is the fact that Supreme Court Justices are appointed unilaterally by the prime minister.

Compared to other federal countries, Canada's court is highly centralized. No other federal country in the world staffs its highest court through the unilateral action of one political actor. As the highest court of appeal, the Supreme Court often ends up functioning as the referee of disputes between Ottawa and the provinces, settling issues over who can do what. But in the game of Canadian federalism, "Team Ottawa" names the referees, and "Team Everybody Else" must live with it.

On the surface, the linkages between Senate reform and the Supreme Court would seem to offer very little as a point of any substantial discussion. But there is a linkage, and it relates to the way in which Justices are selected. The current unilateral appointment procedure is a standing invitation to court-stacking with prime ministerial self-restraint the only barrier. As a result, the Court pays a heavy price – its decisions can become the target of attacks, and the Court itself has been accused of being a pliant tool in the hands of a centralized government. A more neutral appointment process would shore up this vulnerable flank.

Most proposals for Senate reform acknowledge that the new institution should ratify a range of important appointments including Supreme Court Justices, key senior civil servants, Governors and Directors of the Bank of Canada, and key positions for various federal boards, agencies and commissions. This would de-centralize decision-making in Canada by removing sole responsibility for critical appointments from the prime minister. Prime ministers could retain the right to nominate individuals to fill these posts, but they would also have to account for the quality of the nominations being made.

CONCLUSION

The key elements of any democratic order include elections to a representative legislature, governmental accountability to that body, and the ability to act through "majority rule." But if these are central to democracy as an outcome, they are not enough to fulfill the requirements of democracy as a process. Democracy is more than an election every four or five years to declare a set of winners who can attain to power, and a set of losers who are relegated to the sidelines. There must also be procedures, practices and institutions which promote the other critical aspect of democracy – "minority right."

Typically, democratic countries balance "majority rule" with "minority right" by deliberately diffusing political power among several institutions and several political actors as opposed to the centralization of power within a single institution or the hands of a select few. On paper, Canada's public decision-making institutions appear to be relatively decentralized, but pulling back the mask reveals a highly centralized process of decision-making. Our brief review of Canada's democratic institutions and political practices shows that it is the office of prime minister that has become the essential prism through which political life in Canada is viewed. But this prism is one-sided, and it can reflect only a portion of the spectrum that is Canada's diversity. Within the democratic ethos, it is simply unreasonable to expect one set of shoulders to carry all of Canada's geographical, political, economic, and cultural diversity.

Senate reform has typically been advanced as a way to represent regional minorities in national decision-making. But Canada is not restricted to regional minorities alone – our country is marked by significant diversity with a myriad of "self-defining minorities" whether they be economic, social, political, ethnic, linguistic, or cultural. At the same time, our national political institutions remain highly centralized, and this is manifested through the significant powers contained in the office of prime minister. This is highly dangerous for a country like Canada. By its very nature, centralized power does not easily accommodate diversity, and this is precisely the reason why Canada needs a new Senate.

Clearly, Senate reform seems to confront Canadians with no small dilemma – the power of Canadian prime ministers is one reason why meaningful Senate reform is necessary, but also why it has been debated for decades without any substantive movement. The glacier of Senate reform moves painfully slow because nothing can happen unless prime ministers are on side, and as Alberta's recent Senate election shows, they simply refuse.

Is this the end of the matter? Hardly. Debate over the Senate continues to swirl under the surface. Recently, the Supreme Court issued a landmark ruling on a reference case submitted by the federal government on the question of Quebec sovereignty. Among other things, the court was asked whether Quebec had the right under Canadian and international law to issue a unilateral declaration of independence in the wake of a "Yes" vote. In the opinion of the court, such unilateralism would be both "unconstitutional" and "undemocratic" in the sense that it constitutes only a raw and naked "majority rule" version of democracy. Rather, the court stated that a successful referendum in Quebec would force a series of negotiations.

Would not the same principle apply if one or more provinces held referendums that strongly supported a reformed Senate? This is not a card to be played casually, but the Supreme Court decision does suggest that the democratic principles of the Canadian Constitution require good faith negotiations to address such an initiative. Clearly, it would tie Senate reform more tightly to the broader democratic issues that affect all Canadians, and could even oblige the national government to listen. It is a fanciful idea, but one that could constitute yet another chapter in the ongoing story of Senate reform. ■

ENDNOTES

1. In only 19 of the past 55 years did a majority of western MPs belong to the governing party. (Derived by Canada West Foundation from *The 1998 Canadian Global Almanac*, p. 173.)

2. For more on the increasing concentration of power in Canada, see "For the Love of Power," Bruce Wallace in *Maclean's*, October 19, 1998, p. 16; "The King of the Commons," Donald Savoie in *Time*, May 3, 1999, p. 64; *Governing From the Centre: The Concentration of Power in Canadian Politics*, Donald Savoie, University of Toronto Press, Toronto, 1999; and "Parliament Has Been Neutered," Robert Fife, *The National Post*, September 25, 2000, p. A1.

3. For more on these political philosophers, see the entries in *The Blackwell Encyclopaedia of Political Science*, Vernon Bogdanor, (ed.) Blackwell Publishers, Oxford, 1987.

4. James Madison, "Federalist Paper No. 51" in *The Federalist Papers*, Alexander Hamilton, James Madison, John Jay, Mentor, New York, 1961, p. 324.

5. See *Introduction to Switzerland*, Olivier Reverdin, Swiss Office for the Development of Trade, Geneva, 1973, p. 41-52.

6. *The Unreformed Senate of Canada* (Revised Edition), Robert A. Mackay, McLelland and Stewart, Toronto, 1963.

7. The logical extension of this observation is that most MPs failed to receive a majority of the vote in their own riding. Of the 301 MPs elected in 1997, only 100 (one-third) were elected by a majority.

8. For more on the regional effects of the plurality vote system, see *Electoral Reform: The Need is Pressing, the Time is Now*, David Elton and Roger Gibbins, Canada West Foundation, Calgary, 1980.